

1 **BEFORE THE INSURANCE COMMISSIONER**
2 **OF THE STATE OF CALIFORNIA**
3

4 In the Matter of the License and Licensing
5 Rights:

6 SAM SHIMSHON RACHIMI,

7 Individually and

8 dba PEACE INSURANCE
9 SERVICES. And

10 dba CAL-SAFE INSURANCE
11 AGENCY, INC., and

12 dba SHALOM INSURANCE

13 Respondent.

Case No. VA 1087-AP
OAH No. L2006030925

DECISION AND ORDER

14 This matter came on regularly for hearing before Robert S. Eisman, Administrative Law
15 Judge with the Office of Administrative Hearings, in Los Angeles, California, on July 11, 12, and
16 13, 2006.

17 Commissioner John Garamendi was represented by Rebecca M. Westmore, Senior Staff
18 Counsel, Legal Division, Compliance Bureau, California Department of Insurance (Department).

19 Robert Steinberg, Attorney at Law, represented Respondent, Sam Shimshon Rachimi,
20 individually, and doing business (dba) Peace Insurance Services, Cal-Safe Insurance Agency,
21 Inc., and Shalom Insurance. Mr. Rachimi was present during each day of proceeding.

22 Oral and documentary evidence was received and the matter was submitted on July 13,
23 2006.

24 The Administrative Law Judge submitted his proposed decision dated August 1, 2006 and
25 recommended it be adopted as the decision of the Insurance Commissioner. The Commissioner
26 considered but did not adopt the proposed decision and advised Respondent of his rejection of the
27 proposed decision by notice dated August 18, 2006. Transcripts of the hearing were ordered and
28 a complete transcript was received by the Department on June 21, 2007.

1 NOW, THEREFORE, having considered the record, including the evidence introduced in
2 this matter, the Insurance Commissioner hereby makes the following Findings of Fact, Legal
3 Conclusions, and Order.

4 **FINDINGS OF FACT**

5 1. Complainant filed an Accusation against Respondent in his official capacity.

6 2. On February 24, 1988, Respondent was issued a license to act as a Life Agent,
7 license number 0742571. On May 5, 1988, Respondent was issued a license to act as a Fire and
8 Casualty Agent and on April 9, 1990, a license to act as a Fire and Casualty Broker, which were
9 combined into the singular Fire and Casualty Broker-Agent license. All the foregoing licenses
10 have remained continually in force.

11 3. Effective March 28, 1990, the Insurance Commissioner approved the fictitious
12 trade name "Peace Insurance Services" for use by Respondent. There is no record that the
13 Insurance Commissioner authorized any other fictitious trade name or dba for use by Respondent.

14 4. Effective February 19, 1998, the Department of Insurance updated
15 Respondent's records to reflect 14628 Victory Boulevard, Van Nuys, California 91411 as
16 his business address.

17 5. Respondent's insurance company provides insurance services to predominantly
18 Spanish-speaking clients seeking "substandard" policies, i.e. insurance policies for those clients
19 that are considered higher risk for insurance purposes.

20 6. On February 10, 2005, the Insurance Commissioner issued a restricted license to
21 act as a Fire and Casualty Broker-Agent to Marta Noemi Rosales, pursuant to a Summary Order
22 of Denial of Unrestricted License and for Issuance of Restricted License. On November 19,
23 2004, prior to Ms. Rosales' licensure, the Insurance Commissioner issued an Order to Cease and
24 Desist from transacting insurance; soliciting, negotiating or effecting contracts of insurance;
25 advertising or holding herself out as a licensed insurance agent, broker, or solicitor; or engaging
26 in any other insurance activity or transaction to Ms. Rosales. The Order to Cease and Desist, and
27 the subsequent issuance of a restricted license, arise out of Ms. Rosales' October 1, 2004
28 conviction on a plea of nolo contendere in the Superior Court of California, County of Los

1 Angeles, Case No.4CR02708, for violation of Insurance Code section 1631, transacting business
2 without a license, a misdemeanor offense.

3 Other than the restricted Fire and Casualty Broker-Agent license issued in February 2005,
4 the Insurance Commissioner has not issued any other license to Ms. Rosales to at as an individual
5 or to exercise powers of an insurance organization.

6 7. Effective March 8, 2005, the Insurance Commissioner approved the fictitious trade
7 name "AMW Insurance Services" for use by Ms. Rosales.

8 8. On March 4, 1998, the Insurance Commissioner issued to Erick T.
9 Cornejo a license to act as a Fire and Casualty Broker-Agent. That license was
10 continuously in force until March 31, 2002, when it was not renewed. On May 15, 2002,
11 the Insurance Commissioner again issued to Mr. Cornejo a license to act as a Fire and
12 Casualty Broker-Agent. That license remains in force. The Insurance Commissioner has
13 not issued any other license to Mr. Cornejo to act as an individual or to exercise powers
14 of an insurance organization.

15 9. On May 17, 2003, the Insurance Commissioner issued a license to act as a Fire
16 and Casualty Broker-Agent to Dina Colmba Halfon. On March 29, 2006, Ms. Halfon was
17 authorized to exercise powers of a Fire and Casualty Broker-Agent for Progressive United, Inc.

18 10. On April 17, 2003, the Insurance Commissioner issued a license to act as a Fire
19 and Casualty Broker-Agent to Aipora Maayan. On July 1, 1988, Ms. Maayan was authorized to
20 use the fictitious name "Zip Insurance Services" The Insurance Commissioner has not issued
21 any other license to Ms. Maayan to act as an individual or to exercise powers of an insurance
22 organization.

23 11. On February 17, 2001, the Insurance Commissioner issued a license to act as a
24 Fire and Casualty Broker-Agent to Connie Infante. The only broker-agent that appointed Ms.
25 Infante as a solicitor was Respondent, effective February 17, 2001. The Insurance Commissioner
26 has not issued any other license to Ms. Infante to act as an individual or to exercise powers of an
27 insurance organization.
28

1 12. On December 19, 2000, the Insurance Commissioner licensed Gloria Haydee
2 Ramirez as a Fire and Casualty Broker-Agent. On May 8, 2001, Ms. Ramirez was authorized to
3 use the fictitious name "California Sur Insurance Services." The only broker-agent that appointed
4 Ms. Ramirez as its solicitor was Respondent, effective February 15, 2001, and terminated
5 effective October 31, 2001. The Insurance Commissioner has not issued any other license to Ms.
6 Ramirez to act as an individual or to exercise powers of an insurance organization.

7 13. On December 13, 1999, the Insurance Commissioner licensed Yvonne Martinez to
8 act as a Life Agent and authorized her to exercise the powers of a Life Agent for Primerica
9 Financial services Insurance Marketing, Inc. The license and authorization remained in force
10 until December 21, 2001, when Ms. Martinez failed to renew her individual license.

11 On August 4, 2005, Ms. Martinez was again licensed as a Life Agent and on
12 August 9, 2005, the Insurance Commissioner authorized her to exercise the powers of a Life
13 Agent for Primerica Financial Services Insurance Marketing, Inc. The Insurance Commissioner
14 has not issued any other license to Ms. Martinez to act as an individual or to exercise powers of
15 an insurance organization.

16 14. The Insurance Commissioner has not issued any license to Juan Cruz Godinez to
17 act as an individual or to exercise powers of an insurance organization.

18 15. For approximately one and one-half years during 1997 through 1998, although he
19 was not licensed by the Insurance Commissioner at the time, Erick Cornejo placed insurance
20 through Respondent. Prior to providing insurance services through Respondent, Mr. Cornejo had
21 been placing insurance through another producer, but due to his dissatisfaction with that producer,
22 he sought an alternative source. A mutual friend introduced Mr. Cornejo to Respondent. When
23 they started their business relationship, Respondent assumed that Mr. Cornejo was properly
24 licensed because he had been operating through another producer. Respondent did not ask Mr.
25 Cornejo if he was licensed and Mr. Cornejo did not volunteer the fact that he was not.

26 In the course of his business relationship with Respondent, Mr. Cornejo received
27 customers in his office, quoted insurance prices, and if the consumer decided to purchase an
28 insurance policy, Mr. Cornejo accepted the downpayment, prepared the required documents, and

1 personally delivered the paperwork and premium collected from the customer to Respondent or
2 one of Respondent's employees. Until he purchased his own insurance processing software, Mr.
3 Cornejo used software that Respondent had provided for his use.

4 Mr. Cornejo testified it was his estimate that during 1997, he processed eight to ten
5 insurance applications per day. He paid a minimum of \$10-15 to Respondent's dba, Peace
6 Insurance Services, for each insurance application he submitted. The fees were paid so he could
7 process insurance application through Respondent.

8 16. While the Department of Insurance was investigating Respondent's insurance
9 operations, it received notice from Reliant General/Topa Insurance that, according to the
10 insurance company's records, on November 6, 1997, Respondent notified them that he added an
11 office at 6367 South Alameda Street, Los Angeles, with Jose Manuel Valle as the contact person.
12 The insurance company's records also indicated that the relationship between Respondent's
13 primary and Alameda Street offices terminated on December 15, 1998. No evidence corroborated
14 the existence of the office on Alameda Street.

15 17. In 1999, while she was not licensed by the Insurance Commissioner, Gloria
16 Haydee Ramirez, doing business as California Sur Insurance, had a business relationship with
17 Respondent, whereby they referred clients to each other. Ms. Ramirez received insurance
18 applications and premium payments from her clients, but issued documents under the name of
19 Peace Insurance services. Some of these transactions may have been made without Respondent's
20 knowledge or involvement.

21 18. Lewis DesLauriers had been employed by the Department of Insurance as an
22 Investigator since November 2000. In December 2000, he began investigation Respondent's
23 insurance operation in response to a consumer complaint.

24 Based on his initial interview of Respondent, Mr. DeLauriers identified several
25 deficiencies that needed to be corrected and issued a field warning to Respondent. In a letter
26 dated December 4, 2000, the Department of Insurance notified Respondent that he needed to
27 comply with Insurance Code sections 1658 and 1729 (notifying the Department of any change in
28 address), 1661 (notifying the Department of persons removed, added to, or changed, who are to

1 transact insurance under Respondent's license), 1725 (posting of license in Respondent's office),
2 and 1727 (making books and records open for examination and inspection by the Department)
3 and California Code of Regulations, title 10, section 2190.2 (maintaining books and records of
4 insurance transactions).

5 19. During a series of interviews with Mr. DeLauriers, Respondent provided
6 inaccurate information to the investigator with respect to his insurance operations and was not
7 able to produce files and documents that he was required to keep. Respondent could not
8 substantiate whether insurance was sold to certain consumers and he did not maintain a detailed
9 accounting or audit trail for all monies received from the consumers.

10 20. On June 21, 2001, while an unlicensed employee of Respondent, Connie Infante,
11 provided an insurance quote and signed and issued an Association for Cooperative Operations
12 Research and Development (ACORD) Certificate of Liability Insurance for policy number CGL
13 331-90-91, which identified Respondent as the producer, Joe Zavalza "dba State Plastering" as
14 the insured, and the Contractor's State License Board as the certificate holder. New Hampshire
15 Insurance Company, which is a member of American International Group, Inc. (AIG), and Legion
16 Insurance were listed as the insurers. However, Respondent was not an agent of New Hampshire
17 Insurance Company or any other AIG member company, and the policy number was invalid with
18 respect to the insured. Ms. Infante signed the ACORD Certificate of Liability Insurance as the
19 "authorized representative" under/over a stamp bearing the business name "PEACE
20 INSURANCE SERVICE" and Respondent's mailing address and telephone numbers.

21 21. On June 21, 2001, Connie Infante also signed and issued a second ACORD
22 Certificate of Liability Insurance for policy number CGL 331-90-91, which identified Respondent
23 as the producer, dba: State Plastering as the insured, and Atkinson and Associates, Inc. as the
24 certificate holder and additional insured. New Hampshire Insurance Company and Legion
25 Insurance were again listed as the insurers. As indicated in Factual Finding 20, above,
26 Respondent was not an agent of New Hampshire Insurance Company or any other AIG member
27 company, and the policy number was invalid with respect to the insured. Ms. Infante signed the
28

documents as the authorized representative under/over the business stamp for Peace Insurance Services.

22. On April 15, 2002, Yvonne Martinez signed an ACORD Certificate of Liability Insurance for policy number CGL 584325-0, which identified Respondent as the producer, Joel Zavala dba: State Plastering as the insured, and Spalding LLC/Hy-Max Building Corp. as the certificate holder. Ms. Martinez signed the document as the authorized representative under/over the business stamp for Peace insurance Services.¹

23. On June 7, 2002, Yvonne Martinez signed an ACORD Certificate of Liability Insurance with a pending policy number, which identified Respondent as the producer, Travis Inamn, doing business as Prestige Video as the insured, and Electra Cruises as the certificate holder. Ms. Martinez signed the document as the authorized representative under/over the business stamp for Peace Insurance Services.²

24. Candy Hernandez has been employed by the Department of Insurance for 20 years in positions that included consumer representative (16 years) and more recently as an investigator and senior investigator (4 years). In 2002, Ms. Hernandez commenced an investigation of Respondent's insurance operations, based on a complaint from one of Respondent's employees. The employee alleged that unlicensed people in Respondent's office were transacting insurance. Her investigation focused on alleged associations between Respondent and unlicensed individuals who processed insurance transactions through and/or on behalf of Respondent. Marta Rosales was one such unlicensed individual who engaged in insurance transactions on behalf of Respondent.

25. On February 11, 2004, Ms. Hernandez and her supervisor, Doug King, interviewed Marta Rosales at Ms. Rosales' office. During the course of that interview the investigators reviewed files pertaining to insurance transactions involving several consumers. Those files

¹ Paragraph 31 of the Accusation incorrectly states that Gloria Haydee Ramirez, acting on behalf of Respondent, completed, signed and issued an ACORD Certificate of Liability Insurance. The evidence indicates that the document was signed by Yvonne Martinez.

² Paragraph 32 of the Accusation incorrectly states that Gloria Haydee Ramirez, acting on behalf of Respondent, completed, signed and issued an ACORD Certificate of Liability Insurance. The evidence indicates that the document was signed by Yvonne Martinez.

1 contained documents that have sufficient indicia of reliability to establish that Ms. Rosales had
2 sold numerous insurance policies and placed the coverage through Respondent. The documents
3 established that she had provided insurance quotes, completed applications, collected funds,
4 including brokers fees, and issued binders with Peace Insurance Services as the named producer.
5 As Respondent's sub-broker/agent, Ms. Rosales signed and issued insurance documents,
6 including binders, which bore the business stamp of "Peace Insurance Services" or otherwise
7 referred to Respondent. Documents that originated in Ms. Rosales' office resulted in documents
8 subsequently received from companies that insured consumers. These documents implicated
9 Respondent as a participant in Ms. Rosales' insurance transactions. Ms. Rosales kept business
10 cards at her office that pertained to her insurance business, but bore Respondent's license number.

11 26. Ms. Hernandez and Doug King interviewed Respondent on March 24, 2003, April
12 1, 2003 and May 5, 2004. The focus of the March interview was to obtain information pertaining
13 to the insurance coverage of Travis Inman and Joel Zavalza, and Respondent's insurance business
14 relationship with unlicensed individuals. Respondent was not able to produce documentation to
15 support his handling of either consumer's insurance transaction. With respect to Mr. Inman,
16 Respondent claimed that he provided the insurance quote but was not able to produce the
17 consumer's file. Respondent acknowledged that Inman should not have been issued a certificate
18 of insurance because Respondent did not have binding authority with the insurer. When
19 confronted with the fact that the ACORD Certificate of Liability Insurance was signed,
20 Respondent first claimed that he did not know who signed the certificate, but later admitted that
21 he knew, but would not disclose the person's name. After the investigator's informed
22 Respondent that Yvonne Martinez had admitted signing the document at his instruction,
23 Respondent stated that he did not have authority to issue and sign the certificate.

24 Similarly, Respondent did not have the insurance file for Joel Zavalza, doing business as
25 State Plastering. He could not produce the insurance quote. After the investigators informed
26 Respondent that Connie Infante signed the quote, he stated that he prepared the quote and asked
27 Ms. Infante to sign it because she spoke Spanish and Mr. Zavalza was a Spanish-speaking client.
28 When they discussed the certificate of liability that was issued to Mr. Zavalza on June 21, 2001,

1 Respondent stated that he did not know who signed it. After investigators informed him that Ms.
2 Infante admitted signing the document, Respondent said that she did not have authority to sign
3 any certificate of insurance/binder. Respondent did not know why the certificated bore an invalid
4 policy number.

5 27. During the March interview, the investigators told Respondent that the Department
6 of Insurance had a list of unlicensed individuals who had worked for him as consumer sales
7 representatives. When asked if Juan Godinez had worked for him and transacted business
8 without a license, Respondent said "Yes," and then stated, "I take the Fifth." He also said that he
9 would take the Fifth with respect to other names on the investigators' list. When asked if he
10 knew who in his office was licensed, Respondent said that he would have to gather that
11 information and provided it at a later date. In spite of the warning, Respondent received from the
12 Department in 2000 (Factual Finding 18), Respondent did not know the last names of everyone in
13 his office or the types and statuses of any licenses the employees may have held.

14 During the administrative hearing, Respondent admitted that he wanted to "take the Fifth"
15 during the interview, not because he did anything wrong, but only because he "felt threatened" by
16 the investigators.

17 28. On April 1, 2003, Ms. Hernandez and Mr. King re-interviewed Respondent.
18 During that interview, Respondent changed his position with respect to the processing of
19 insurance for Travis Inman. He stated that he had prepared the documents, but that Yvonne
20 Martinez handled the transaction at the office because he was not present when Mr. Inman
21 purchased the coverage. Respondent stated that Mr. Inman gave the money to Ms. Martinez.
22 Respondent had difficulty explaining the insurance transaction and stated he did not have binding
23 authority for the transaction and did not know why Ms. Martinez provided Electra Cruises with a
24 Certificate of Liability Insurance.

25 Respondent also had trouble explaining the insurance transactions involving Joel
26 Zavalza/State Plastering. Respondent told the investigators that he quoted all the policies for Mr.
27 Zavalza, but that Connie Infante typed the proposals based on information she received from the
28 insurance companies. He also stated that he took the information from the client and either he or

1 Ms. Infante would have provided the information to the insurance company for a quote.
2 However, Respondent was not able to produce a copy of the quotes, which he also claimed he
3 could not show to the consumer, because it contained confidential information (i.e. his
4 commission). Respondent could not produce any of the requested documentation regarding the
5 transactions, could not explain the rationale for determining the premiums and fees, and was
6 unaware of the disposition of the policies. He stated that he did not sign the transaction
7 documents referred to by the investigators and that whoever signed them did not have authority to
8 do so.

9 During the interviews, when investigators questioned Respondent about various insurance
10 transactions, he often referred to computer problems his office and/or insurance providers had,
11 which precluded him from finding requested information and caused him to provide inaccurate or
12 inexplicable information.

13 Respondent did not maintain records such that he had an audit trail of all his insurance
14 transactions. Due to a lack of transaction traceability, Respondent was unable to provide
15 information pertaining to specific insured clients. Additionally, records that were required to be
16 kept in his principal office were not present for inspection and examination.

17 29. On May 5, 2004, Ms. Hernandez and Mr. King met with Respondent at his office
18 to discuss various insurance transactions and his business relationships with Marta Rosales and
19 other individuals who were unlicensed.

20 After being asked to clarify his position and involvement with Ms. Rosales, Respondent
21 stated that he thought she was a licensed broker and started accepting transactions from her as a
22 sub-broker. The reason that Respondent assumed she was licensed was that she presented a
23 business card to him that listed her name, AMW Insurance, and a license number. Respondent
24 also understood that Ms. Rosales had previously worked at another insurance company.
25 Respondent did not recall verifying her license with the Department of Insurance. As noted in
26 Factual Finding 25, Ms. Hernandez interviewed Marta Rosales in February 2004. Shortly
27 thereafter, Ms. Rosales notified Respondent of the interview. Respondent testified it was at that
28 time he first learned that Ms. Rosales was not licensed.

1 After learning that Ms. Rosales was not licensed, Respondent terminated his business
2 relationship with her.

3 Respondent admitted that during his business relationship with Ms. Rosales, she paid him
4 a fee of \$15-20 per policy submission. Ms. Rosales provided insurance quotes, was authorized by
5 Respondent to use his insurance transaction software, and prepared and delivered documents and
6 payments to Respondent's office for further processing of her transactions.

7 The investigators presented Respondent with insurance transaction documents, seeking
8 clarification as to which consumers named in the documents were actually his clients, and who
9 had signed the insurance forms. Respondent became defensive and uncooperative. When the
10 investigators asked Respondent if he knew that Gloria Haydee Ramirez, Lina Halfon, Connie
11 Infante, Juan Godinez, Yvonne Martinez, and Zipora Maayan were all unlicensed individuals who
12 at one time or another transacted insurance on his behalf, Respondent refused to answer. He did
13 admit, however, that he never verified whether any of them were licensed by the Department of
14 Insurance.

15 30. Respondent submitted letters dated April 2 and July 31, 1998 and February 16,
16 2004, evidencing his attempts to stop unlicensed and/or authorized persons from transacting
17 insurance on his behalf or representing affiliation with Respondent. After learning that Marta
18 Rosales was not licensed, Respondent had his attorney notify her that she should not contact
19 Respondent and ceased and desist from holding herself out as an insurance agent under or
20 otherwise being associated with Respondent.

21 31. During the administrative hearing, Respondent testified that he did not know that
22 Erick Cornejo and Marta Rosales were unlicensed when he entered into business relationships
23 with them. He also testified that none of his unlicensed employees sold insurance. Their only
24 responsibility was to find an available agent to assist a consumer and, if no one was available, to
25 get information from the customer until an agent was free.

26 32. Respondent testified that as part of the insurance transactions handled by Mr.
27 Cornejo and/or Ms. Rosales, he would receive a \$16 fee for each policy. From the money he
28 received from the sub-broker/agents, Respondent would forward the premium to the insurance

1 provider and keep the fee. Respondent also received an eight to 12 percent commission from the
2 insurance company on each policy transacted by Mr. Cornejo or Ms. Rosales.

3 Respondent obtained broker fees from consumers, based on insurance transactions Mr.
4 Cornejo and Ms. Rosales completed while they were unlicensed. The broker fees were obtained
5 from consumers before the broker signed the broker fee agreements and the broker did not
6 disclose, concurrent with the conveyance of an initial premium quotation, the fact that a broker
7 fee may be charged.

8 33. Cal-Safe Insurance Agency, Inc. located in Van Nuys, California is licensed by the
9 Insurance Commissioner, license number 0575593. In 2001, Respondent entered into an
10 agreement with Julia R. Fredman to purchase 100% controlling interest in Cal-Safe Insurance
11 Agency. However, after assuming control of the company, Respondent failed to file his use of
12 the fictitious name "Cal-Safe Insurance Agency" with the Department of Insurance.

13 34. On at least one occasion, Respondent advertised his insurance services in the
14 Hebrew language, using the namestyle "Shalom Insurance." Respondent failed to file his use of
15 the fictitious name "Shalom Insurance" with the Department of Insurance.

16 35. Although unlicensed sub-broker/agents Erick Cornejo and Marta Rosales used
17 Respondent's Peace Insurance Services" stamp, agent number, producer number, and/or software,
18 Respondent could not explain how they obtained access to his stamp, software, or license
19 numbers.

20 21 **LEGAL CONCLUSIONS**

22 1. California Insurance Code section 382.5, subdivision (f) states:" The
23 Commissioner may suspend or revoke the license of any agent issuing or purporting to issue any
24 binder of a type for which the agent lacks authority from the insurer named in the binder."

25 2. California Insurance Code section 1738, subdivision (a), provides that the
26 Insurance Commissioner may suspend or revoke any permanent insurance license on any of the
27 grounds on which he may deny an application for licensure.
28

1 3. California Insurance Code section 1668 provides grounds for which the Insurance
2 Commissioner may deny any application or any license issued pursuant to chapter 5 of the code
3 (i.e., the chapter containing rules governing production agencies.)

4 4. California Insurance Code section 1668.5 provides grounds for which the
5 Insurance Commissioner may suspend or revoke the permanent license of any organization
6 licensed pursuant to chapter 5 of the code.

7 5. California Insurance Code section 1724.5 requires that every licensed individual
8 and organization shall file with the Insurance Commissioner, in writing, the true name of the
9 individual or organization and also all fictitious names under which the licensee conducts or
10 intends to conduct business, and any change in or discontinuance of such names.

11 6. California Insurance Code section 1727 provides that the Insurance Commissioner
12 shall “promulgate reasonable rules and regulations specifying the manner and type of records to
13 be maintained by those licensees acting as insurance agents and brokers and the location where
14 the records shall be kept.” Every licensee acting as an insurance agent and broker, whether or not
15 the insurance agent and broker employs a licensee in the capacity of an insurance solicitor, shall
16 keep the records as required by those regulations.

17 7. California Insurance Code section 1728 states, in pertinent part: “Every resident
18 insurance fire and casualty broker-agent shall maintain a principal office in this state for the
19 transaction of business.” Pursuant to section 1729, “[e]very licensee ... shall immediately notify
20 the commissioner in writing of any change in his address”

21 8. California Insurance Code section 1734 provides, in pertinent part, that any
22 licensee that receives fiduciary funds shall remit premiums, less commissions, and return
23 premiums received or held by him to the insurer or the person entitled thereto, or maintain such
24 fiduciary funds at all times in a trustee bank account or depository in California separate from any
25 other account or depository.

26 9. California Code of Regulations, title 10, chapter 5, subchapter 1, article 6.8,
27 commencing with section 2189.1 sets forth broker fee requirements applicable to transactions and
28 services performed by fire and casualty broker-agents.

1 Section 2189.3 provides that a broker-agent acting in the capacity of a broker may charge
2 a brokers fee, provided that, among other requirements the consumer agrees to the fee in advance
3 of the agreement, after full disclosure of all material facts surrounding the fee, the broker provides
4 the consumer with the standard Broker Fee Disclosure, the consumer and broker sign a broker fee
5 agreement, and the broker discloses, concurrent with the conveyance of an initial premium
6 quotations, the fact that a broker fee may be charged.

7 Section 2189.5 provides, in pertinent part, that a broker commits unfair and deceptive
8 practices if the broker has charged or will charge a broker fee and fails to provide the consumer
9 with the standard Broker Fee Disclosure; fails to complete all relevant portions of the broker fee
10 agreement before giving it to the consumer for review; fails to provide to a consumer a fully
11 completed copy of the broker fee agreement that is signed by both the consumer and the broker;
12 fails to promptly refund an entire broker fee if the broker acted incompetently or dishonestly
13 resulting in a financial loss to the consumer, or performs a negligent or intentional act including,
14 but not limited to, permitting an unlicensed employee to transact insurance for, or on the behalf
15 of, the consumer; failing to timely refund an unearned premium or commission; failing to remit
16 consumer's premium payment to an insurer or general agent resulting in policy cancellation.

17 Section 2189.6, subdivision (a), the failure to comply with any subdivision of this article
18 by a fire and casualty broker-agent shall constitute a violation of Insurance Code section 1668,
19 subdivision (j), and shall be grounds to suspend or revoke a license.

20 10. California Code of Regulations, title 10, chapter 5, subchapter 1, article 7,
21 commencing with section 2190, sets forth recordkeeping requirements for brokers and agents.

22 Under section 2190.1, all record-keeping systems must provide an audit trail so that
23 details underlying the summary data, such as invoices, checks, and statements, may be identified
24 and made available up request. All such systems must provide the means to trace any transaction
25 back to its original source or forward to final entry and must be designed and programmed to
26 produce the required information in an intelligible form.

1 Section 2190.2 provides that the following records shall be maintained by every agent or
2 broker, with respect to each and every insurance transaction, for at least five years after the
3 expiration or cancellation date of the policy to which the records pertain:

- 4 (a) Name of the Insured,
- 5 (b) Name of the Insurer,
- 6 (c) Policy Number,
- 7 (d) Effective date, termination date and mid-term cancellation date of
8 coverage,
- 9 (e) Amount of gross premium,
- 10 (f) Amount of net premium,
- 11 (g) Amount of commission and basis on which computed,
- 12 (h) Names of persons who receive, or are promised, any commissions or other
13 valuable consideration related to the transaction,
- 14 (i) Amount of premium received including itemization of any partial payments
15 or additional premium,
- 16 (j) Date premium received by agent or broker,
- 17 (k) Date deposited in bank account or bank depository into which premiums
18 are deposited or maintained ...,
- 19 (l) Name and address of bank and number of account in which premium is
20 deposited or maintained ...,
- 21 (m) Date premium paid by agent or broker to the person entitled thereto and
22 identification of the means of transmittal,
- 23 (n) Amount of net and gross return premium,
- 24 (o) Date return premium is received from insurer by agent or broker which
25 may be the date the credit is taken from the insurer or the date the check or
26 draft is received, and
- 27 (p) Date gross return premium is remitted to person entitled thereto by agent or
28 broker and identification of means of transmittal.

1 Under section 2190.3, subdivision (a), every agent or broker shall maintain the following
2 records in a file pertaining to a particular insured for a period of eighteen months after the
3 transaction described by such records:

- 4 (1) Identify of each person who transacted the insurance, renewals and
5 any change in coverage,
- 6 (2) Records of all binders, whether written or oral, showing the names
7 of insured and insurer, nature of coverage, effective and termination
8 dates and premium for binder or policy to be issued,
- 9 (3) Copy of application or memorandum of request for insurance,
- 10 (4) Correspondence received, copies of correspondence sent,
11 memoranda, notes of conversation, or any other record necessary to
12 describe the transaction.

13 Section 2190.7 provides, in pertinent part, that all records described in section 2190.2
14 shall be kept in the principal office of the agent or broker, except where otherwise specifically
15 authorized by the commissioner. All records described by section 2190.3 shall be maintained at
16 the office servicing the insured. All records shall be maintained in an orderly manner so that the
17 information therein is readily available and shall be open to inspection or examination of the
18 commissioner at all times and the commissioner may at any time require such licensee to furnish
19 him any information maintained or required to be maintained.

20 11. California Insurance Code section 1739, states:

21 Where a permanent license is held by an organization, both the organization itself and any
22 natural person named thereon shall, for the purposes of this article, be deemed to be the holders
23 thereof. If that natural person commits any act or fails to perform any duty which is a ground for
24 suspension or revocation of the license held by the organization, that action may be taken against
25 the organization. If any natural person named under an organization license commits any act or
26 fails to perform any duty which is a ground for the suspension or revocation of any license held
27 by the organization, the commissioner may suspend or revoke the license of the organization, or
28 the license of the natural person, or may take all of those steps.

1 12. Respondent contends that when he arranged to use Erick Cornejo and Marta
2 Rosales as sub-broker/agents, he had no knowledge regarding their license statuses. Respondent
3 feels that, under the circumstances (i.e. his understanding that they had previously, transacted
4 insurance), his assumptions regarding the license status of Erick Cornejo and Marta Rosales were
5 reasonable.

6 Respondent contends he was also unaware of the license status of consumer
7 representatives that worked in his own office and participated in insurance transactions that
8 required licensure. Respondent stated that those who were not licensed were not authorized to
9 perform any function that required licensure.

10 Respondent failed to exercise due diligence with respect to license verification of those
11 who transacted insurance on his behalf and/or for which he received broker fees. Either
12 Respondent was grossly negligent or intentionally violated insurance laws with respect to the use
13 of unlicensed persons to transact insurance.

14 13. The doctrine of respondeat superior has long held employers responsible for the
15 acts of their employees. Similarly, if a licensee elects to operate its business through employees
16 and sub-brokers/agents, the licensee must be responsible to the licensing authority for the
17 employees' and sub-brokers/agents' conduct in the exercise of the license. *Mantzoros v. State*
18 *Board of Equalization*, 87 Cal.App.2d 140, 144 (1948). By virtue of the ownership of a license,
19 the owner has a responsibility to see to it that the license is not used in violation of the law. (Ford
20 Dealers Assn. v. Department of Motor Vehicles, 32 Cal.3d 347, 360 (1982)).

21 A licensee can be held responsible for his employees' actions even though the licensee has
22 not participated in the wrongful actions and has no knowledge of them. A non-negligent, licensed
23 employer may be subject to discipline by the licensing agency when his employee performs a
24 licensed activity negligently or in violation of statutes. The employer/licensee's liability for the
25 conduct of an employee acting under the employer's license is based on the theory that the
26 employer licensee has a non-delegable duty of compliance. *Rob-Mac, Inc. v. Department of*
27 *Motor Vehicles*, 148 Cal.App. 3d 793, 199 (1983). Given their relationship, the same liability
28 applies to an insurance producer, with respect to his sub-brokers/agents.

1 As the licensee and sole owner of his business, Respondent is accountable and responsible
2 for the business-related acts and omissions of Erick Cornejo, Marta Rosales, Connie Infante,
3 Yvonne Martinez, and any other unlicensed employee or sub-broker/agent who transacted
4 insurance on his behalf. He is accountable to the Department of Insurance for their conduct in the
5 exercise of Respondent's licenses. Those licenses maybe disciplined because Respondent
6 allowed and/or failed to prevent unlicensed employees and sub-brokers/agents from performing
7 insurance transactions that required they be separately licensed.

8 14. In the context of consumer protection, a fraudulent practice or act, as used in
9 Insurance Code section 1668, subdivision (i), does not refer to the common law tort of fraud, but
10 only requires a showing that members of the public are likely to be deceived. Unlike common
11 law fraud or deception, a violation can be shown even if no one was actually deceived, relied
12 upon the fraudulent practice or act, or sustained any injury or damage. Additionally, intent is not
13 a necessary element of proving that a respondent engaged in a fraudulent business practice. *See*
14 Business and Professions Code section 17200, et seq.; *Saunders v. Superior Court*, 27 Cal.
15 App.4th 832, 839 (1994); *Podosky v. First Healthcare Corp*, 50 Cal.App.4th 632, 647-48 (1996);
16 *Irwin v. Mascott*, 94 F.Supp.2d 1052, 1057 (N.D. Cal., 2000).

17 15. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
18 licensing rights under Insurance Code section 382.5, subdivision (f), in that Respondent issued or
19 purported to issue binders of a type for which the agent lacked authority from the insurer named
20 in the binder. (Factual Finding 20, 25, and 26; Legal Conclusions 2 and 12 through 15.)

21 16. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
22 licensing rights under Insurance Code sections 1668, subdivision (b), and 1738, in that
23 Respondent committed multiple acts and omissions in violations of insurance license laws, such
24 that it would be contrary to the public interest to allow Respondent to maintain his license and
25 licensing right without restrictions. (Factual Finding 6 through 12, 17 through 23, 25 through 29,
26 and 32 through 35; Legal Conclusions 2, 3, and 11 through 14.)

27 17. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
28 licensing rights under Insurance Code sections 1668, subdivision (e), and 1738, in that

1 Respondent displayed a lack of integrity when he failed to provide accurate information about his
2 insurance business to investigators from the Department of Insurance, received unearned
3 broker/agent fees, did not protect consumer interests by properly processing insurance
4 transactions and allowing and/or failing to prevent unlicensed individuals from engaging in
5 consumer insurance transactions on his behalf. (Factual Finding 6 through 12, 17 through 23, 25
6 through 29, and 32 through 35; Legal Conclusions 2, 3, and 11 through 14.)

7 18. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
8 licensing rights under Insurance Code sections 1668, subdivision (i), 1668.5, subdivision (a)(1),
9 and 1738, in that Respondent engaged in fraudulent business practices and acts, which constitutes
10 unfair competition. (Factual Finding 6 through 12, 17 through 23, 25 through 29, and 32 through
11 35; Legal Conclusions 2, 3, 4, and 11 through 14.)

12 19. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
13 licensing rights under Insurance Code sections 1668, subdivision (j), 1668.5, subdivision (a)(2),
14 and 1738, and California Code of Regulations, title 10, sections 2189.6, in that Respondent
15 demonstrated he is not trustworthy and engaged in wrongful acts and practices in the course of his
16 business, thereby exposing the public to danger of loss, and charged broker fees in violation of
17 California Code of Regulations, title 10, sections 2189.3 and 2189.5. (Factual Finding 6 through
18 12, 17 through 23, 25 through 29, and 32 through 35; Legal Conclusions 2, 3, 4, 9, and 11
19 through 14.)

20 20. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
21 licensing rights under Insurance Code sections 1668, subdivision (l), 1668.5, subdivision (a)(4),
22 and 1738, in that Respondent failed to perform duties expressly enjoined upon him or performed
23 acts expressly forbidden by a provision of the Insurance Code. (Factual Finding 6 through 12, 17
24 through 23, 25 through 29, and 32 through 35; Legal Conclusions 2, 3, 4, and 11 through 14.)

25 21. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
26 licensing rights under Insurance Code sections 1668, subdivisions (n) and (o), 1668.5,
27 subdivisions (a)(6) and (7), and 1738, in that Respondent aided and abetted unlicensed employees
28 and sub-broker/agents who engaged in insurance transactions requiring licensure. (Factual

1 Finding 6 through 15, 20 through 23, 25 through 29, and 32 through 35; Legal Conclusions 2, 3,
2 4, and 11 through 14.)

3 22. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
4 licensing rights under Insurance Code sections 1724.5 in that Respondent failed to file his use of
5 the fictitious names Cal-Safe Insurance Agency, Inc. and Shalom Insurance with the
6 Commissioner. (Factual Finding 3, 33, and 34; Legal Conclusions 5 and 11.)

7 23. Cause exists for the Commissioner to suspend or revoke Respondent's licenses and
8 licensing rights under Insurance Code sections 1727, and California Code of Regulations, title 10,
9 sections 2190.1, 2190.2, 2190.3, and 2190.7, in that Respondent failed to keep records as required
10 by regulations and did not have records open to inspection or examination by the Commissioner
11 or his designee. (Factual Finding 6 through 12, 17 through 23, 25 through 29, and 32 through 35;
12 Legal Conclusions 18, 26, and 28; Legal Conclusions 6 and 10 through 14.)

13 24. All factual and legal arguments not addressed herein are found to be irrelevant
14 and/or unsupported by the evidence and are therefore rejected.

15 25. Complainant established by clear and convincing evidence to a reasonable
16 certainty, that Respondent engaged in conduct in violation of various sections of the Insurance
17 Code. Respondent offered no credible evidence of explanation, mitigation or rehabilitation.

18 **ORDER**

19 WHEREFORE, THE FOLLOWING ORDER is hereby made:

20 All the licenses and Licensing Rights of Respondent SAM RACHIMI, individually and
21 dba PEACE INSURANCE SERVICES, dba CAL-SAFE INSURANCE AGENCY, INC., and
22 dba SHALOM INSURANCE are hereby **REVOKED**.

23 This Order shall be effective in 30 days.

24
25 Dated: September 28, 2007.

STEVE POIZNER
Insurance Commissioner

26
27 By /s/
Susan J. Stapp
28 Deputy Chief Counsel

1 In accordance with Government Code section 11521, the following notice is provided to
2 you concerning reconsideration of this Decision. You may file a petition for the reconsideration
3 of this Decision. However, the power to order reconsideration expires 30 days after the delivery
4 or mailing of a decision to a Respondent, or on the date set by the Department as the effective
5 date of the decision if that date occurs prior to the expiration of the 30-day period.

6 Petitions for reconsideration should be directed to:

7 Susan J. Stapp
8 Deputy Chief Counsel
9 California Department of Insurance
45 Fremont Street
San Francisco, CA 94105

10 The Department of Insurance may, but is not required to grant a stay not to exceed 30
11 days for the purpose of filing a petition for reconsideration. Any request for a stay must be filed
12 within the applicable time period set forth above.

13 If additional time is needed to evaluate a timely petition for reconsideration, the
14 Department may grant a stay of the expiration, for no more than 10 days and solely for the
15 purposed of considering the petition.

16 If no action is taken on a petition within the time allowed for ordering reconsideration, the
17 petition shall be deemed denied.